

SUPREME COURT OF THE UNITED STATES.

No. 24.—DECEMBER TERM, 1860.

GEORGE W. WATTERSTON, PLAINTIFF IN ERROR,

VS.

EDWARD NOBLE.

Brief for Defendant in Error.

This is a writ of error to the circuit court of the United States for the eastern district of Louisiana.

The defendant in error instituted proceedings upon a note and mortgage executed in his favor by the plaintiff in error, against whom there was a verdict and judgment, the execution of which was suspended by a supersedeas, upon the removal of the proceedings to this court.

The defendant in error has but a simple task to perform, viz., that of demonstrating that the writ of error was obtained merely for delay, and that, being frivolous, its use should be punished by the assessment of the damages allowed by the 23d rule of the court.

The defendant below met the plaintiff's demand by what is termed in Louisiana a dilatory exception. This was promptly overruled, and the cause was brought to trial upon the petition and the answer, which contained nothing beyond the plea of the general issue.

This plea, under the practice in Louisiana, put nothing at issue, as it was an admission of the defendant's signature, and there were no endorsements to prove. Rec., p. 2.

When the cause was called the defendant, being absolutely without defence, very properly remained away, and the verdict and judgment followed as matter of course. pp. 4, 5.

Indeed, without the presumption arising upon the face of the promissory note, the plaintiff must have recovered on the mortgage; for as that instrument, by its express language, makes the note a part of itself, being *paraphed* by the notary, p. 2, it is seen to be a mortgage with a covenant to pay.

In Louisiana a mortgage is an authentic act, and proves itself.

Civil Code, Art. 2,233.

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following jury were sworn and empanelled to try the same, viz: H. D. Seaman, B. F. Simms, F. G. Randolph, M. M. Simpson, Robt. Geddes, A. M. Hopkins, E. H. Pomroy, E. Parmele, C. Heath, D. L. Ranlett, J. H. Heald, and E. Smith.

Robt. Geddes was appointed foreman of the jury, and thereupon the cause was submitted without argument, and after charge from the court the jury returned the following as their verdict: We, the jury, find for the plaintiff the sum of thirty-seven hundred and eighteen dollars and sixty-five cents, with interest thereon at the rate of eight per cent. per annum from 9th March, 1855, until paid.

ROBT. GEDDES, *Foreman.*

New Orleans, June 9th, 1858.

Whereupon it was ordered that the same be recorded.

Circuit Court of the United States, 5th circuit and eastern district of Louisiana—April Term, A. D. 1858.

New Orleans, Wednesday, 9th June, 1858.

Court met pursuant to adjournment:

Present, Hon. J. A. Campbell, presiding judge; *present*, Hon. Theo. H. McCaleb, district judge.

EDWARD NOBLE	}	2,912.—Judgment.
vs.		
GEO. W. WATTERSTON.		

By reason of the verdict of the jury herein rendered, and in conformity thereto, it is now ordered, adjudged, and decreed, that the plaintiff, Edward Noble, do have and recover judgment against the defendant, George W. Watterston, for the sum of thirty-seven hundred and eighteen dollars and sixty-five cents, with interest thereon at the rate of eight per cent. per annum from 9th March, 1855, until paid, and costs of suit, with mortgage upon the property described in the petition, and in the act of mortgage thereto annexed.

Judgment rendered 9th June, 1858; judgment signed 14th June, 1858.

THEO. H. McCALEB,
U. S. Judge.

Petition for Writ of Error.—Filed 17th June, 1858.

United States Circuit Court, 5th circuit and eastern district of Louisiana.

EDWARD NOBLE	}	No. 2,912.
vs.		
G. W. WATTERSTON.		

George W. Watterston, the defendant in the suit entitled and numbered as above, avers that there is error in the rulings and

judgment of the court in said suit, which he desires to have corrected by the Supreme Court of the United States. Wherefore, in order that there may be a revisal of said judgment by said Supreme Court, he asks for a writ of error returnable to said Supreme Court according to law; and holding himself ready to furnish and tendering a bond, in a sufficient amount and with competent sureties, to enable him to carry up his said writ, he prays that execution be withheld and all further proceedings suspended in said suit until the final determination of said Supreme Court shall be had, and for general relief.

G. W. WATTERSTON, *Pro Se.*

Order for a Writ of Error.

Let a writ of error be granted in this case as prayed for, upon the defendant furnishing a bond, with security, according to law.

THEO. H. McCALEB,
U. S. Judge.

Bond for Writ of Error.—Filed 18th June, 1858.

Know all men by these presents that we, George W. Watterston, as principal, and John O. Terry, as surety, are held and firmly bound unto Edward Noble in the full and just sum of seven thousand five hundred dollars, to be paid to the said Edward Noble, his certain attorney, executors, administrators, or assigns; to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals, and dated this 18th day of June, in the year of our Lord one thousand eight hundred and fifty-eight.

Whereas lately at a circuit court of the United States, 5th judicial circuit, holding sessions in and for the eastern district of Louisiana, in a suit depending in said circuit court, wherein Edward Noble was plaintiff, and George W. Watterston was defendant, judgment was rendered against the said George W. Watterston, defendant; and the said George W. Watterston having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court to reverse the judgment in the aforesaid suit, and a citation directed to the said Edward Noble, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington the first Monday of December next:

Now the condition of the above obligation is such, that if the said George W. Watterston shall prosecute his writ to effect, and answer all damages and costs if he fail to make his plea good,

then the above obligation to be void, else to remain in full force and virtue.

G. W. WATTERSTON. [L. s.]
JNO. O. TERRY. [L. s.]

Sealed and delivered in the presence of—

J. W. GURLEY.

Jno. O. Terry, surety on this bond, being sworn, says he is worth the sum of \$7,500 over and above his debts and liabilities.

JOHN O. TERRY.

J. W. GURLEY, *Com.*

United States of America, Circuit Court of the United States,
fifth circuit and eastern district of Louisiana.

CLERK'S OFFICE.

I, John W. Gurley, clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, do hereby certify that the foregoing 13 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had in the case of Edward Noble vs. George W. Watterston, No. 2,912 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New
[L. s.] Orleans, this 26th day of July, A. D. 1858.

J. W. GURLEY, *Clerk.*

Writ of Error.

UNITED STATES OF AMERICA, ss.

The President of the United States to the honorable the Judges of the Circuit Court of the United States, in and for the fifth circuit, and holding sessions for the eastern district of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or one of you, between Edward Noble and Geo. W. Watterston, a manifest error hath happened, to the great damage of the said Geo. W. Watterston, as by his complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said

Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court of the United States, this 18th of June, [L. s.] in the year of our Lord one thousand eight hundred and fifty-eight.

J. W. GURLEY,
*Clerk of the United States Circuit Court
for Eastern district of Louisiana.*

Filed 18th June, 1858.

J. W. GURLEY, *Cl'k.*

Citation in Error.

THE UNITED STATES OF AMERICA.

The President of the United States to Edward Noble, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein George W. Watterston is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, this 18th day of June, in the year of our Lord one thousand eight hundred and fifty-eight.

THEO. H. McCALEB,
U. S. Judge.

Marshal's Return.

Rece'd June 18th, 1858, and on the same day served a copy of the within citation in error on Ed. Noble, by handing the same to W. G. Stansbury, esq., att'y of record for said Ed. Noble being absent at the time; and on the 19th of June, 1858, returned this writ into court.

CHAS. CATOIR, *D'y M.*

Filed 9th Dec., 1858.